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6 **BEFORE THE WASHINGTON STATE OFFICE**
7 **OF THE INSURANCE COMMISSIONER**

8 In the Matter of the Application
9 regarding the Conversion and
10 Acquisition of Control of Premera
Blue Cross and its Affiliates

Docket No. G02-45

PETITION FOR LEAVE TO INTERVENE

11 PURSUANT TO RCW 48.31C030(4); RCW 48.04.010; RCW Chapter 34.05; and WAC
12 284-02-070, the University of Washington moves the Office of the Insurance Commissioner for
13 leave to intervene as an interested party in the above matter. The University of Washington,
14 through its School of Medicine, has significant interests that will be affected by the Insurance
15 Commissioner's decision in this matter.
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17 I. STATEMENT OF FACTS

18 A. Applicant Intervener.

19 The University of Washington School of Medicine, through its component institutions
20 and organizations, educates and trains medical professionals. The School's components and
21 organizations are the School itself, University of Washington Medical Center, Harborview
22 Medical Center, the Association of University Physicians d/b/a University of Washington
23 Physicians, and the University of Washington Physicians Network (collectively, "School
24 components"). The School is the only medical school in the State of Washington and serves as
25 the medical school for four other states. In this role, the School carries out its mission of
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1 education, research and community service through medical and specialty care. The School's
2 components contract with both public and private plans, including Premera.

3 The School of Medicine and its component institutions are classified within the health
4 care profession as an academic medical center. The University of Washington's academic
5 medical center is one of several across the nation and, because the University is a public
6 institution, so is the School's academic medical center. As for all academic medical centers in
7 the United States, and particularly public academic medical centers, the operational costs for the
8 University of Washington's academic medical center are significantly higher than the operational
9 costs of other, non-teaching health care facilities. The majority of the costs of direct medical
10 education have not been supported by direct appropriation from the State. Rather, these costs
11 have been supported by public and private health care purchasers through their health care
12 purchasing activities. The number of health care service contractors and health maintenance
13 organizations doing business in Washington has decreased over the past decade.

16 In his first order on case management, the Commissioner determined that because
17 Premera's application presents questions of important public interest, he will be holding a public
18 adjudicative hearing. The Commissioner set a deadline of November 26, 2002 by which time
19 persons who wish to participate formally in the proceedings must file a petition to do so. The
20 Commissioner's first order sets the basis for intervention as RCW 48.31B.015(4) and RCW
21 48.31C.030(4). *See*, First Order: Case Management Order pages 2, 4, 5 and 8 as filed herein on
22 October 24, 2002.

24 B. Applicant's Significant Interest.

- 25 1. **Premera supports the medical education and training programs of the**
26 **University. The University's education and training programs promote care**
to underserved populations in rural and urban Washington state.

1 Premera has supported medical education and training in Washington through its
2 contracts with the School's components. Premera's contract rates with the School components
3 reflect the higher costs associated with medical education in a clinical setting. Without
4 Premera's support, the School may not be able to continue to provide today's level of medical
5 education and training.

6 Premera's role in supporting the extraordinary costs of medical education has been
7 crucial to the University's work of providing qualified health care providers to the public. The
8 majority of the costs of medical education have been not been supported by direct appropriated
9 support from the State. Rather these costs have been supported by public and private health care
10 purchasers through their health care purchasing activities. At a time when medical and specialty
11 care is increasingly difficult to maintain in underserved and rural areas, Premera's financial
12 support has helped underpin the University's continued commitment to training medical
13 professionals to work in those areas. For example, the School is the coordinating entity for the
14 Family Medicine Residency Network, a network of resident training sites for family medicine
15 physicians. In addition, the School operates the WWAMI program, which provides training and
16 education for medical students in Washington, Wyoming, Alaska, Montana, and Idaho. The
17 program has been successful in achieving a rate of return by WWAMI graduates to practice
18 medicine in underserved and rural areas that substantially exceeds the national average, thus
19 enhancing the provision of primary care to patients who might otherwise face a lack of medical
20 care. Through these and other primary care-focused training and education programs, the School
21 sustains medical care for the underserved in both rural and urban areas of Washington.

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23 **2. The School of Medicine, through its faculty and institutions, is the major**
24 **provider of care to indigent and low income populations.**

25 The School, through its faculty and institutions, is a major provider of care through
26 Premera's Healthy Options contract. Further, the School is the major provider of hospital and
specialty care to the State's indigent and low income populations. University operated hospitals

1 and University physicians provide medical care to citizens who come from all over the state. In
2 its 2002 report, the Washington State Department of Health reported that Harborview Medical
3 Center alone provides 43% of the hospital-based charity care in King County and 23% of the
4 charity care provided in the State. Children's Hospital and Regional Medical Center, staffed
5 almost exclusively with University physicians, provides 9% of the charity care in Washington;
6 the University of Washington Medical Center provides another 7%. Together, these three
7 University staffed hospitals provide approximately 60% of all charity care provided by hospitals
8 in King County and 33% of the total provided in the State. The School provides almost \$1
9 billion per year of patient care in its medical centers and clinics. As the major provider of
10 hospital and specialty care for the medically indigent, the University is concerned that the
11 proposed conversion not dilute Premera's commitment to underserved populations in
12 Washington.

13 Nationally, academic medical center hospitals, particularly public academic medical
14 center hospitals, are committed to providing health care to the poor. The results of a study
15 commissioned by the Commonwealth Fund on Financial Performance of Academic Health
16 Center Hospitals, 1994-2000 were published in September of 2002. The report noted a
17 precipitous decline in public academic medical center total margins is due to a rapid rise in
18 reported average cost per admission; between 1999 and 2000, average cost per admission
19 increased by 8.6 percent, while revenue increased by only 3.7 percent per admission. The
20 payment-to-cost ratios for Medicare, Medicaid, and private payers all decreased between 1999
21 and 2000, with the largest reduction occurring in private payer payment-to-cost ratios, which fell
22 from 137.1 percent to 109.5 percent. As the nation's health care system became more
23 competitive in the 1990's, managed care organizations and other payers questioned these higher
24 costs through aggressive contract negotiations. Changes in the health care market that result in
25 reductions in clinical revenue place academic medical centers at financial risk and undermine
26 their capacity to carry out mission-related activities. The School is no exception. If Premera's

1 commitment to the underserved is diminished, the consumer in Washington, particularly the
2 underserved consumer, will be harmed.

3 4 III. LEGAL AUTHORITY AND ARGUMENT

5 The University should be permitted to intervene in the proceedings because it has a
6 unique and significant interest that may be affected by Premera's conversion. The University
7 qualifies as an intervener under several legal standards.

8 A. The University's Interest in Premera's Application is Unique and Significant.

9 In considering an application for acquisition of control of a health care service contractor
10 or a health maintenance organization, the Commissioner may hold public hearings at which "any
11 person whose significant interest is determined by the commissioner to be affected may present
12 evidence, examine and cross-examine witnesses, and offer oral and written arguments and in
13 connection therewith may conduct discovery proceedings in the same manner as is allowed in the
14 superior court of this state." RCW 48.31C.030(4).¹

15 Premera's role in supporting the extraordinary costs of medical education has been
16 crucial to the University's work of providing qualified health care workers to the public. Like
17 other third party payers, Premera has supported medical education and training. The insufficient
18 level of government funding, combined with the shrinkage of third party payers through mergers
19 and exits from the State, leaves the School of Medicine in a precarious position. Should
20 conversion of Premera serve to subjugate its current commitment to medical education and
21 training, the School may not be able to continue providing today's level of service to the public.

22 Moreover, medical education and medical care to the indigent are significant interests not
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24 ¹ Likewise, in proceedings to acquire control of an insurer in general, at the public hearing
25 thereon, "any person whose significant interest is determined by the commissioner to be affected
26 may present evidence, examine and cross-examine witnesses, and offer oral and written
arguments and in connection therewith may conduct discovery proceedings in the same manner
as is allowed in the superior court of this state." RCW 48.31B.015(4)(b).

1 only to the School of Medicine, but also to the citizens of Washington. As the only medical
2 school and academic medical center in a five-state region, the University of Washington is
3 uniquely qualified to represent the interests of the public in medical training and research. For
4 this reason, the University of Washington seeks leave to intervene in Premera's conversion
5 proceedings as provided by RCW 48.31C.030(4).

6 B. The University Qualifies as an Intervener under the Administrative Procedure Act.

7 As an administrative entity, proceedings pending at the Office of the Insurance
8 Commissioner are governed by the Administrative Procedure Act, chapter 34.05. Intervention in
9 administrative proceedings is addressed at RCW 34.05.443, which provides that:

10 The presiding officer may grant a petition for intervention at any time, upon
11 determining that the petitioner qualifies as an intervener under any provision of
12 law and that the intervention sought is in the interests of justice and will not
impair the orderly and prompt conduct of the proceedings.

13 RCW 34.05.443(1).

14 As a non-profit holding company, Premera is subject to Chapter RCW 48.31C governing
15 holding companies for health care service organizations and health maintenance organizations.
16 Should Premera's proposed conversion proceed, the reorganized Premera will also be a holding
17 company, albeit a for-profit one. Because these proceedings are governed by the holding
18 company statute, the University of Washington should be permitted to intervene. As discussed
19 above, the University's unique position and significant interest in the Premera conversion serve
20 the interests of justice. The University does not seek permission to conduct discovery or, other
21 than possible rebuttal, to examine witnesses (see discussion below). Because the Commissioner
22 has not yet made a decision, intervention by the University will not impair the orderly and
23 prompt conduct of the proceedings.
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25 C. The University Qualifies as an Intervener under Other Legal Standards.
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1 The University of Washington also meets the legal standard of intervention as set forth in
2 the Rules of Civil Procedure for Superior Court. Specifically, Civil Rule 24 governs
3 intervention. CR 24(a) allows intervention as a matter of right where the application is timely
4 and:

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6 the applicant claims an interest relating to the property or transaction which is the
7 subject of the action and he is so situated that the disposition of the action may as
8 a practical matter impair or impede his ability to protect that interest, unless the
9 applicant's interest is adequately represented by existing parties.

10 For the purposes of determining whether intervention is proper, the well-pleaded
11 allegations in the intervener's complaint are accepted as true. See, American Discount Corp. v.
12 Saratoga West, Inc., 81 Wn.2d 34, 36, 499 P.2d 869 (1972). Upon demonstrating that the
13 provisions of CR 24(a) are satisfied, the movant is entitled to intervene as a matter of right. See,
14 e.g., Loveless v. Yantis, 82 Wn.2d 754, 513 P.2d 1023 (1973) (property owners should have
15 been allowed to intervene as of right where property values and interests in a common well were
16 affected by action).

17 Here, the University's motion for intervention has been made prior to hearing on the
18 matter of Premera's conversion and within the time specified by the Commissioner for
19 requesting intervention. The University's interest is in Premera's financial status and the
20 competing obligations that for-profit status may impose. Premera's proposal to convert from a
21 non-profit organization to a for-profit enterprise places the question of financial priorities in the
22 forefront of the conversion application that is pending before the Commissioner. As the only
23 School of Medicine in the State, the University is the only party that could possibly represent the
24 public's interest in funding for continued medical education.
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1 Additionally, CR 24(b)(2) provides that, “When a party to an action relies for ground of
2 claim or defense upon ... any regulation, order, requirements, or agreement issued or made
3 pursuant to ... statute ..., the officer or agency [responsible for administering that statute] upon
4 timely application may be permitted to intervene in the action.” In this case, the University relies
5 for its claim upon the requirements imposed upon it pursuant to RCW 28B.20.300-.305. As the
6 governmental agency responsible for operation of the School of Medicine, the University should
7 be permitted to intervene on this ground, as well. Cf. Metro Transportation Co. v. Balboa Ins.
8 Co., 118 F.R.D., 423, 424 (E.D. Pa 1987) (public utility commission permitted to intervene in
9 insurance dispute; its regulation underlay plaintiff’s claim, and intervention should “be granted
10 liberally to governmental agencies because they purport to speak for the public interest”); Group
11 Health Inc., v. Blue Cross Ass’n., 587 F. Supp. 887, 892 (S.D.N.Y. 1984) (intervention by the
12 Department of Health and Human Services appropriate where disposition of case could affect the
13 complex administrative framework for Medicare reimbursement).

16 D. Conclusion.

17 The School of Medicine is the only medical school in Washington State and serves as the
18 medical school for four other states. The School is the major provider of hospital-based charity
19 care and care to Medicaid beneficiaries in the State.

20 As a non-profit corporation, Premera has been free to contract payer rates which benefit
21 the public by assisting with funding for medical education and indigent care. Conversion to
22 profit status provides an incentive for any business, Premera included, to focus on maximizing
23 profit for shareholders. The University is concerned that maximizing profit for shareholders not
24 come at the expense of medical education and care for the medically indigent. If a profit motive
25 is added to Premera’s corporate philosophy, how will Premera’s practice and commitment to
26 participation in funding medical teaching and research be affected?

1 As a party whose interests are significantly impacted by Premera's proposal, the
2 University of Washington believes that the above matters must be resolved or addressed prior to
3 approval of the proposed Premera Blue Cross conversion. Whatever resolution is reached
4 through this process, the University believes that medical education and medical care to the
5 indigent must be protected.

6 IV. RELIEF SOUGHT

7 The University requests an order allowing it to intervene in the above matter to be heard
8 on the issues of preserving medical education and training and of maintaining medical coverage
9 for the medically indigent in Washington. The University anticipates offering documentary
10 evidence in the form of published studies concerning academic medical centers in general and
11 reports concerning the School of Medicine in particular. The University will be able to tender
12 the documentary evidence in advance of any hearing and does not anticipate the need for any
13 discovery or for witness examination other than potential rebuttal. Thus, to promote an orderly
14 and efficient proceeding, the University's participation can be limited to oral and written
15 argument, based on the advance submission of documentary evidence, with the reservation of
16 witness examination for potential rebuttal purposes.

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1 Respectfully submitted this ____ day of November, 2002.

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